

BEFORE THE SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-878

CITY OF PEORIA, ILLINOIS AND VILLAGE OF PEORIA HEIGHTS, ILLINOIS

ADVERSE DISCONTINUANCE
PIONEER INDUSTRIAL RAILWAY CO.

SUPPLEMENT TO
REQUEST FOR RECONSIDERATION OF O.F.A.

Daniel A. LaKemper, Esq.
General Counsel
Pioneer Industrial Railway Co.
1318 S. Johanson Road
Peoria, Illinois 61607
Tel.: (309) 697-1400
Fax: (309) 697-8486

Dated: May 10, 2005.

BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-878

ADVERSE DISCONTINUANCE
PIONEER INDUSTRIAL RAILWAY CO.

SUPPLEMENT TO
REQUEST FOR RECONSIDERATION OF O.F.A.

Pioneer Industrial Railway Co. (“PIRY”) filed a Request for Reconsideration of Offers of Financial Assistance in this proceeding on April 29, 2005. This proceeding concerns the future of 8.29-mile-long line in Peoria County, Illinois, commonly known as the “Kellar Branch,” operated by Pioneer Industrial Railway Co.

On May 6, 2005 the Peoria *Journal Star*, the area’s only daily newspaper, published an article (See attached Exhibit 1) concerning this proceeding, and the construction of the connection to the former Union Pacific spur line west of the Kellar Branch. The article attributes to the City of Peoria’s “resident engineer” a statement that “Soon after the spur [connection] is complete, rehabilitation of the Kellar Branch line *that will still be used* should also be finished” [emphasis supplied]. This is a further admission that the City intends to abandon most of the Kellar Branch, not have a “new operator” provide service over it.

The article also states that the Park District “will not be able to pick up where the City left off and remove track,” because, according to “Mike Friberg, the Park District’s project planner,” the Park District is “still waiting on the decision from the Surface Transportation Board”.

This, again, is further evidence that there will be no “replacement” operator on the Kellar Branch. As soon as the connection is made and the City can “wrest control of the Kellar Branch” from PIRY, most of the line will be scrapped.¹

Finally, the article states that “The city contends that Pioneer Railcorp has illegally been using the city-owned track since the short-line operator’s contract to use the rail expired last summer.”²

Obviously, the City well knows that PIRY is not operating illegally. The allegation is libel per se.

More importantly, the continuing false representation that PIRY’s contract expired requires further scrutiny. The City contends that the “minimum period of twenty years” provided in Section 9(a) of the Agreement is actually a maximum period.³ It is not. There is no language of limitation, other than “until terminated for cause or by mutual consent.” The twenty-year minimum was a commitment on the part of the Railroad to operate for at least twenty years (Section 4(b) provides that the Railroad “agrees for the term of this Agreement to serve the industries...”). The City, in fact, even before the end of the minimum twenty year period, had a “reserved right of abandonment” under Section 10. That section provided that “This agreement shall in no way be construed as requiring or obligating the CITY to continue its ownership, maintenance, improvement or operation of said tracks...nor in any way limit the CITY from disposing of, encumbering, or abandoning all or any part thereof, at any time it may see fit....” It is worth noting that the Agreement uses the term

1 The reference to the Park District removing the track raises the question of whether the City has already transferred ownership, casting further doubt on the City’s claim of ownership, and also raising the question of whether Central Illinois Railroad Company, the alleged new operator, actually has an agreement with the owner.

2 PIRY will ignore the fact that the City’s contract is with PIRY, not Pioneer Railcorp.

3 The Agreement in its entirety is attached as Exhibit A, to PIRY’s filing in

“*abandonment*,” not “*discontinuance*”. The City obviously recognized at the time the Agreement was entered into that this proceeding would be an abandonment, not a discontinuance. There is no provision in the agreement for a “change of operators”.

On the contrary, Section 4(c) provides that “The mode of operation over said track shall be under the *sole* control of the [Railroad]” [emphasis supplied].

The grant language of Section 3(a) and the annual payment provided for in Section 6(a) are both without reference to any limitation, twenty year or otherwise.

There is no provision whatsoever as to what might happen after “expiration,” as one would expect if expiration were contemplated in twenty years.

The fact is, this Agreement conveyed all operating rights to P&PU (now PIRY, by assignment), permanently, as the equivalent of a railroad easement. The City’s consent to the assignment to PIRY even acknowledged the “release” of “P&PU from its obligation to continue rail service under the Agreement.”

That common carrier obligation, of course, was transferred to PIRY, which takes its obligation seriously. PIRY regularly operates the entire line for its customers, and is actively marketing the entire line, despite the City’s hindrances. This is a line with active customers and a willing carrier. Abandonment would not even be under consideration, but for the demands of a vocal minority for another trail, which PIRY has even offered to accommodate through joint use of the right of way. The City refused to consider that option.

The City’s current legal construction and filings are simply geared to arrive at the conclusion it desires – abandoning most of the Kellar Branch without having to file an abandonment application and being subjected to the O.F.A. process.

___ F.D. No. 34518, on July 1, 2004, and incorporated herein by reference.

PIRY is financially viable, and is ready, willing and able to purchase and operate the Kellar Branch. With the increasing price of fuel, and the need to improve fuel efficiency and reduce dependence on imported oil, the Board's mandate to preserve and promote rail service grows in importance every day. Intra-urban rail lines such as the Kellar Branch will become critical to future economic development. The Kellar Branch should be preserved for its current and future economic benefits, not cavalierly tossed away for a trail that will be another liability for the taxpayers.

PIRY respectfully requests that the Board not condone this behavior. We ask that the Board recognize this proceeding for what it is. It is an abandonment. We ask the Board to formally convert this proceeding into an abandonment, and permit PIRY to make an Offer of Financial Assistance to purchase the line and preserve rail service on the Kellar Branch.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Daniel A. LaKemper". The signature is fluid and cursive, with the first name "Daniel" and last name "LaKemper" clearly distinguishable.

Daniel A. LaKemper, Esq.
General Counsel
Pioneer Industrial Railway Co.
Peoria, Illinois 61607
Tel.: (309) 697-1400

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing instrument was served on May 10, 2005, by e-mail on:

Thomas F. McFarland
Mcfarland@aol.com

And by United States Mail, first class, postage fully pre-paid, on April 29, 2005 upon:

Thomas F. McFarland
Thomas F. McFarland, P.C.
208 S. LaSalle St., Suite 1890
Chicago, Illinois 60604



Daniel A. LaKemper, Esq.
General Counsel
Pioneer Industrial Railway Co.
Peoria, Illinois 61607
Tel.: (309) 697-1400

VERIFICATION

I, Guy L. Brenkman, President of Pioneer Industrial Railway Co., declare under the penalty of perjury that to the best of my knowledge the foregoing is true and correct. Further, I certify that I am qualified to file this Verified Statement. Executed this 10th day of May, 2005.

/s/ Guy L. Brenkman

EXHIBIT 1



MATT DAYHOFF/JOURNAL STAR

Workers with Otto Baum Construction Co. construct a crossing Thursday at University Street north of Pioneer Parkway for the new Kellar Branch railroad spur. A short section of University Street has been closed since Monday so the project can be completed.

Final spike to be set in rail spur

Rail construction

Construction of the new rail spur should be complete in four weeks, with the section of University Street where a crossing is being installed open by early next week.



Rock Island Trail extension could be finished within weeks

BY MATT BUEDEL
OF THE JOURNAL STAR

PEORIA — A rail spur for the extension of the Rock Island Trail should be complete in the next few weeks, as a legal battle between the city and Pioneer Railcorp continues.

The city had previously expected a ruling from the federal Surface Transportation Board by April 15 on whether the city could wrest control of the Kellar Branch line from Pioneer Railcorp to link the hiking trail to Downtown and the riverfront.

But the board, which has exclusive domain over all railroads, still has not delivered a decision. An attorney for the STB said this week that issues in the case have not been resolved, and no deadline has been established

for a final ruling.

"We still think they should have (ruled by April 15), according to their own regulations," said City Attorney Randy Ray.

The city contends that Pioneer Railcorp has illegally been using the city-owned track since the short-line operator's contract to use the rail expired last summer.

Since late last year, five Pioneer Railcorp train cars had been parked on the track where it is intended to connect with the new rail spur, just beyond the 1500 block of Luthy Drive near University Street and Pioneer Parkway.

Two cars were there Thursday, still preventing construction of the final segment of spur. The spur will connect the track to the Union Pacific Railroad to the west. City crews, meanwhile, are working on the spur.

"We're putting in the University

crossing right now," said city resident engineer Marvin Shoop. "By four weeks or so, we should have the entire rail construction done."

The crossing at University should be done and the road there reopened by Monday or Tuesday, he said.

Soon after the spur is complete, rehabilitation of the Kellar Branch line that will still be used should also be finished, he added.

"It's looking like a completed project, almost," Shoop said.

While the city has been able to move forward with its work, the Peoria Park District will not be able to pick up where the city left off and remove track that will be bypassed by the spur, and eventually converted into a trail for hikers and bikers.

"We're still waiting on the decision from the Surface Transportation Board," said Mike Friberg, the Park District's project planner.

